

MINUTES OF THE MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

**2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
(916) 263-2222**

November 18, 2011, beginning at 10:00 a.m.

Board Members Present: Jerry Silva, President; Paul Wilburn, Vice President; Carl Josephson; Mike Modugno; Hong Beom Rhee; Ray Satorre; Patrick Tami; Michael Trujillo; and Erik Zinn.

Board Members Absent: Philip Quartararo

Board Staff Present: Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Celina Calderone (Board Liaison); Nancy Eissler (Enforcement Manager); Larry Kereszt (Enforcement Analyst); Jeff Alameida (Budget Analyst); Susan Christ (Licensing Unit Manager); and Gary Duke (Legal Counsel).

1. **Roll Call to Establish a Quorum** - The meeting was called to order by President Silva at 9:05 a.m. Roll call was taken, and a quorum was established.
2. **Public Comment** - Annette Lockhart representing CLSA thanked the Board for their assistance in assisting them in securing space at the Sacramento examination site to distribute lunch to all those taking the land surveyor examinations. She indicated that this is a great benefit to those taking the examination to have that opportunity to relax and not worry about lunch.

Mr. Moore indicated that there is a group of people from northern California who requested that a comment be read at the Board meeting. Ms. Calderone read the statement from Ms. Wauldbaum. Their issue that was discussed is the actual standards that have been used in the past differ from those that are used now in evaluating the work of geologists. Mr. Zinn commented briefly that this Board does not set standards of care nor did the original Geologists and Geophysicists Board. They were a licensing board. The Board does not have control over geologists as the letter implies in terms of standards of care. The implication that old notes issued by the Mining and Geology Board are somehow are the standard of today is antiquated. He believes it would be good to discuss with the Geologist and Geophysicist TAC. Mr. Duke reiterated what Mr. Zinn discussed by indicating that the standards are set by the profession and they evolve.

Michael Trujillo joined the meeting 9:14 a.m.

5. **Executive Officer's Report**

A. Legislation

1. Discussion of Legislation for 2011-2012:

AB 275 Solorio. Rainwater Capture Act of 2011. This bill would, among other things, authorize landscape contractors, holding a specified classification, to design and install all exterior components of a rainwater capture system.

BOARD POSITION: Support
VETOED BY THE GOVERNOR

AB 1023 Wagner. Maintenance of the codes. This bill would make technical changes to various provisions of law based on the recommendations made by the Legislative Counsel to the Legislature. This bill repeals duplicate Sections 6731.1, 6731.2, 8726.1, and 8761.1 of the Business and Professions Code.

BOARD POSITION: Watch
SIGNED BY THE GOVERNOR – CHAPTER 296, STATUTES OF 2011

AB 1210 Garrick. Civil Engineering - relating to water quality. This bill was amended to exempt civil engineers from any additional requirements to perform activities in the preparation of storm water pollution plans.

BOARD POSITION: Support
VETOED BY THE GOVERNOR

AB 1424 Perea. Franchise Tax Board: delinquent tax debt. This bill would permit a state agency that issues professional licenses, to suspend, revoke, or refuse to issue a license if the licensee's name is included on the list of the 500 largest tax delinquencies of the State Board of Equalization and the Franchise Tax Board.

BOARD POSITION: Oppose
SIGNED BY THE GOVERNOR – CHAPTER 455, STATUTES OF 2011.

SB 541 Price. Regulatory Boards: expert consultants. This bill would authorize the boards of DCA to continue to utilize expert consultants, as done in the past, without going through formal contracting process.

BOARD POSITION: Support
SIGNED BY THE GOVERNOR - CHAPTER 339, STATUTES OF 2011.

SB 543 Price. Business and professions: regulatory boards. This bill extends the sunset dates for various DCA regulatory boards and bureaus that are

being evaluated by the Joint Sunset Review Committee. It also makes various changes to the Engineer's Act, Land Surveyor's Act, and Geologist and Geophysicist Act.

BOARD POSITION: Support

SIGNED BY THE GOVERNOR – CHAPTER 448, STATUTES OF 2011.

SB 692 Walters. Professional Engineers. This bill would change the disciplines currently licensed as "title act" engineers to "practice act" engineers.

BOARD POSITION: Watch

SB 944 Senate Business Professions & Economic Development Committee. This is one of the Committee's Omnibus bills. It includes some minor changes to the Engineer's Act, the Land Surveyor's Act, and the Geologist and Geophysicist Act.

BOARD POSITION: Support

a. Temporary Authorization Repeal (Business and Professions Code Section 6760)

Ms. Christ explained that the recommendation to repeal of the temporary authorization has been around for a long time. She stated that she believes if it is used judiciously, there is a place for it. The last temporary authorization issued was for a very specialized engineer and one of the few in the U.S. who could do the design work involved in the project; therefore, he was granted temporary authorization. Mr. Moore indicated that in the Board agenda, staff has asked the Board to consider a proposed motion to pursue legislation to repeal it in accordance with the Strategic Plan. Mr. Josephson agreed that there are times when it is appropriate. Mr. Tami added that with the amount of intelligence that is here in California, it is extremely rare if not completely out of the question that one could not find one person who is licensed here and could be in responsible charge of any project. One of his concerns is with the legality of denying some and granting others. Ms. Christ indicated that only civil engineers apply because the other disciplines can acquire their license by comity; the civil engineer applicants have to take the two California special civil examinations. She advised that very few people who apply for temporary authorization complete their licensure due to failing the examinations or they are simply never taken.

Motion: Mr. Tami and Mr. Satorre moved to direct staff to pursue legislation to repeal Business and Professions Code section 6760.

Vote: 2-6-1 Motion Failed

Since the motion failed, President Silva indicated it would be very

advantageous to gather more information and present that to the Board at a future meeting. Mr. Moore suggested researching other boards in other states.

B. Strategic Plan Goals for 2011-2012

Mr. Moore indicated that staff met with DCA to implement an action plan to achieve objectives in the Strategic Plan. This plan set forth specific actionable items which need to be accomplished in order to achieve the objectives. The committee reviewed all items using guidelines. Each item has to be specific, which means it had to be clear and detailed, measureable, accountable, realistic, and time specific to achieve each action.

The committee identified thirteen action items for Goal One, thirteen for Goal Two, sixteen for Goal Three, nine for Goal Four, and five for goal Five. Approximately 40% of action items for this Fiscal Year have been completed. The majority of the remaining items are ongoing. Mr. Moore expects a final copy of the action plan soon and will forward a copy to all Board members. President Silva requested that a one page summary sheet be compiled with the Board's accomplishments to communicate both internally and externally what the Board does.

6. Examination/Licensing

Ms. Hirano introduced herself and sought approval from the Board for the following test plans. Mr. Moore indicated that a survey was conducted, and while it did not get the response the Board was looking for, the response was more than sufficient for this occupational analysis.

- A. Approval of New Test Plan Specifications – Civil Seismic Principles
- B. Approval of New Test Plan Specifications – Civil Engineering Surveying
- C. Approval of New Test Plan Specifications – Land Surveyor

Motion: Mr. Tami and Mr. Zinn moved to approve

Vote: 9-0, motion carried

7. Consideration of Rulemaking Proposals, as follows:

- A. Adoption of Proposed Amendments to Board Rules 407 and 428 (16 CCR 407 and 428), Engineers and Land Surveyors Fees and Abandoned Applications

Mr. Alameida indicated that a review of the original proposal revealed that the fee changes as originally proposed would not create fiscal solvency for the Board; therefore, the proposal was amended and a 15-day noticed public comment period was held regarding the new fees. He explained that separate application and state examination administration fees will be established; the renewal fee will decrease; and there will be adjustments to the retirement and delinquency fees. At this time, staff is requesting

that the Board adopt the final language and direct staff to move forward with the final rulemaking proposal, including submittal to DCA and the Office of Administrative Law for final approval.

Mr. Alameida added that since the Board is giving up administration of NCEES examinations, separating the fees could result in a savings to licensees and applicants. Mr. Duke said it is a trend to separate the fees. Mr. Alameida also stated that with a pass-thru of fees, as is currently done, it is very difficult to control the flow the money from the applicant to the Board, then to NCEES. It is much easier to segregate the fees. The applicant will pay NCEES for the examination as opposed to the Board being involved as a middleman. Mr. Moore added that these fees more closely reflect the Board's actual cost, and much research was performed to determine the appropriate fees. Mr. Alameida explained that fees were based on 3- and 5-year averages with a conservative estimate for an increase in workload built in. Since the Board is not for profit, it is important to maintain the exact revenue for exact expenditures. The Board would still need to maintain a higher balance of revenue as opposed to expenditures just to maintain solvency. Mr. Wilburn clarified that a new applicant will have to pay an application fee and state examination fee, if needed, and Mr. Moore added that if the applicant is deemed not eligible, the state examination fee would be refunded. Over the next two to three cycles, the Board's objective is to have the Board's final filing dates align to where there is ample time to review applications before registering for the NCEES examinations. Another goal is to be able to notify the applicant whether they are qualified before they register with NCEES. In the past, there would be a \$275.00 fee to pay for staff time, technical review, development, and cost for NCEES to provide a book, administration and grading of examinations. It was identified what it costs to process an application. If the applicant was deemed to be ineligible, we would refund half the fee. Therefore, \$125.00 closely represents the cost of the application review. Approximately 10% of applicants each cycle are deemed ineligible.

Mr. Moore pointed out that applicants are applying for licensure, not an examination. They are not approved because they did not meet the minimum qualifications for licensure. Mr. Tami stated that he prefers the Nevada Board's application method: candidates take the examination and if the candidate passes then their application is then reviewed.

Mr. Alameida indicated there will be a minimal surplus for the Board to take care of enforcement, administration, and licensing. The Department of Finance prefers to see months in reserve which is based on the fund balance. Based on the appropriation, it is minimal. The surplus was not an exorbitant amount, just a solvency to handle the enforcement, registration, and licensing. He added that if the Board maintains the \$275.00

application fee the Board will be insolvent in 3 years.

Bob DeWitt representing ACEC asked when this will become effective. Mr. Alameida indicated around May or June 2012. Mr. Copelan representing PEGC indicated that PEGC is opposed to changes within Section 407 that would allow a person who is unqualified to receive only a partial refund. Mr. Tami clarified that the proposal is to grant a reimbursement of the examination fee for an applicant in which their application is reviewed and staff time is used to evaluate the application. Mr. Moore pointed out that before the application fee was \$275.00. If the applicant was found ineligible the Board would refund half the amount, or \$137.50. The Board is proposing the application fee to cover the cost of just the application review and processing. In the civil engineer's case, they pay \$150.00 for the California Seismic Principles examination and another \$150.00 for the California Engineering Surveying examination, for a total of \$300.00. If they are found ineligible the Board would refund \$300.00 back to the applicant. He added that the examination fee encompasses all development and administration costs.

Motion: Mr. Wilburn and Mr. Modugno moved to adopt the proposed changes and direct staff to proceed with the rulemaking process.

Vote: 9-0, motion carried

- B. Adoption of Proposed Amendments to Board Rule 443 (16 CCR 443), Inspection of examinations
Mr. Kereszt indicated this would repeal section (c)(1).

Motion: Mr. Josephson and Mr. Zinn moved to adopt the proposed changes and direct staff to proceed with the rulemaking process.

Vote: 9-0, motion carried

- C. Proposed Amendments to Regulations Pertaining to Geology and Geophysics (16 CCR 3000, et seq.)
No report was given

8. Approval of Delinquent Reinstatements

Motion: Mr. Modugno and Mr. Wilburn moved to approve

Vote: 9-0, motion carried

9. Liaison Reports

A. NCEES

1. Appointment of Associate Member

Mr. Moore indicated that the Board approved Jim Foley as Emeritus Member for NCEES and Mike Donelson as Associate Member. The

Board needs to appoint another Associate Member.

Motion: Mr. Satorre and Mr. Josephson moved to appoint the Board's Executive Officer, Ric Moore, as Associate Member to NCEES.

Vote: 9-0, motion carried

Mr. Moore advised that Jerry Carter, NCEES Executive Director, contacted him about serving on the Member Board Administrator Task Force. The NCEES president appointed Mr. Moore to the Task Force.

10. **2012 Board Meeting Dates**

After reviewing the 2012 calendar of meeting dates, it was determined that Mr. Tami would not be available for the January 12-13, 2012, meeting; however, those dates would be pursued if a quorum could be established. The May 3-4, 2012 was changed to a one-day teleconference meeting on May 15 as President Silva would not be available prior to that date. The Board is contemplating whether March 8-9 or June 28-29 would be best to have a meeting in Southern California.

11. **Other Items Not Requiring Board Action**

President Silva presented Mr. Modugno a gavel plaque for his service as prior Board President.

Mr. Silva would like to communicate to the Department what our Board is doing in recognizing licensees for their tenure.

Mr. Modugno spoke at California State University Northridge. He recommends further outreach. Mr. Zinn spoke to the International Building Code Organization (IBCO) Mr. Josephson attended a refugee session in San Diego to explain the process of becoming licensed in California. President Silva attended Pomona's examination administration. Mr. Wilburn attended Sacramento's examination administration. Mr. Josephson attended San Diego's examination administration.

Mr. Tami would like to see a new Advisory Committee that involves general items of interest such as strategic planning and other administrative type items. He would like to discuss this at a future meeting.

12. **Approval of Consent Items**

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

- A. Approval of the Minutes of the July 28, 2011 and September 8, 2011, Board Meeting

Motion: Mr. Wilburn and Mr. Satorre moved to approve
Vote: 9-0, motion carried

3. **Closed Session** – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]
 - A. Rodolfo Dimalanta v. Board for Professional Engineers and Land Surveyors, Court of Appeal, First Appellate District, Case. No. A131485 [Superior Court of Alameda County Case No. RG10513640]
4. **Open Session to Announce the Results of Closed Session**

Ms. Eissler indicated that the Board discussed litigation as noticed and adopted four stipulations and a default decision. Mr. Duke indicated that a proposed decision was also adopted.
13. **Adjourn**

The meeting adjourned at 12:03 p.m.

PUBLIC PRESENT

Annette Lockhart, CLSA
Roger Hanlin, CLSA
Jonathan Tarkowski
Robert DeWitt, ACEC